

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMZIDDIN TROWELL,

Plaintiff,

-against-

CORRECTION OFFICER WHITEFIELD,
RIKERS ISLAND, AND THE NEW YORK
CITY DEPARTMENT OF CORRECTION,

Defendants.

23-CV-9789 (DEH)

ORDER OF SERVICE

DALE E. HO, United States District Judge:

Plaintiff, who currently is incarcerated at the North Infirmary Command on Rikers Island, brings this action, *pro se*, under 42 U.S.C. § 1983, alleging that Defendants violated his federally protected rights. By order dated November 6, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.¹

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*. While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See 28 U.S.C. § 1915(b)(1)*.

suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

DISCUSSION

A. New York City Department of Correction (“DOC”)

Plaintiff’s claims against DOC must be dismissed because an agency of the City of New York is not an entity that can be sued. N.Y. City Charter ch. 17, § 396 (“[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.”); *Jenkins v. City of New York*, 478 F.3d 76, 93 n.19 (2d Cir. 2007); *see also Emerson v. City of New York*, 740 F. Supp. 2d 385, 396 (S.D.N.Y. 2010) (“[A] plaintiff is generally prohibited from suing a municipal agency.”).

In light of Plaintiff’s *pro se* status and clear intention to assert claims against the City of New York, the Court construes the complaint as asserting claims against the City of New York, and directs the Clerk of Court to amend the caption of this action to replace DOC with the City of New York. *See Fed. R. Civ. P. 21.* This amendment is without prejudice to any defenses the City of New York may wish to assert.

B. Waiver of service

The Clerk of Court is directed to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Correction Officer Whitefield and the City of New York waive service of summons.

CONCLUSION

The Court dismisses Plaintiff’s claims against the New York City Department of Correction. *See 28 U.S.C. § 1915(e)(2)(B)(ii).* The Clerk of Court is directed to add the City of New York as a Defendant under Fed. R. Civ. P. 21.

The Clerk of Court is further directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendants City of New York and Correction Officer Whitefield waive service of summons.

The Clerk of Court is also directed to mail an information package to Plaintiff.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFPs status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: November 22, 2024
New York, New York



DALE E. HO
United States District Judge